

State of Kansas

Department of Health and Environment

Permanent Administrative Regulations

Published in Kansas Register February 20, 2014, effective March 7, 2014

28-4-550. Definitions.

- (a) "Assessment" means the initial and ongoing procedures used by qualified personnel to identify early intervention services.
- (b) "Child find" means a public awareness program provided by community and state agencies that prepares information on the availability of early intervention services, disseminates information given to parents of infants and toddlers with disabilities to all primary referral sources, and adopts procedures for assisting the primary referral sources for the purpose of identifying the potential need for early intervention services.
- (c) "Collaboration" means the establishment and maintenance of open communication and cooperative working relationships among service providers and other caregivers and the family when identifying goals and delivering care to children.
- (d) "Community" means an interacting population of various kinds of individuals in a common location.
- (e) "Community-based," when used to describe a place, means a place where small groups of infants and toddlers without disabilities are typically found, including child care centers and day care facilities.
- (f) "Continuing education experience" means either of the following:
 - (1) College and university coursework completed after an individual receives a professional credential; or
 - (2) an inservice, workshop, or conference that offers professional continuing education credit.
- (g) "Developmental delay" means any of the following conclusions obtained using evidence-based instruments and procedures in one or more areas of development, including cognitive, physical, communication, social or emotional, or adaptive development:
 - (1) There is a discrepancy of 25 percent or more between chronological age, after correction for prematurity, and developmental age in any one area.
 - (2) There are delays of at least 20 percent in two or more areas.
 - (3) The informed clinical opinion of a multidisciplinary team concludes that a developmental delay exists when specific tests are not available or when testing does not reflect the child's actual performance.
- (h) "Early intervention records" means reports, letters, and educational and medical records that are collected, maintained, or used by the local lead agency in the screening, evaluation, and development of an IFSP or in the delivery of services, or both.
- (i) "Eligible," when used to describe a child, means a child from birth through two years who has one of the following:
 - (1) A developmental delay or a known condition leading to a developmental delay; or
 - (2) an established risk for developmental delay. The developmental delay does not have to be exhibited at the time of diagnosis, but the common history of the condition indicates the need for early intervention services.
- (j) "Evaluation" means the procedures used by qualified personnel to determine a child's eligibility for early intervention services.
- (k) "Family" means the individuals identified by the parent or parents of an infant or a toddler with special needs to be involved in developing the IFSP and early intervention services.

- (l) "Family service coordinator" means a person who is responsible for coordinating all early intervention services required under part C across agency lines and for serving as the single point of contact for carrying out these early intervention services.
- (m) "Family service coordination services" means the services provided by a family service coordinator.
- (n) "Home-based," when used to describe a site, means a site identified by a family as the home where individualized services for a child and family are delivered.
- (o) "IDEA" means the individuals with disabilities education act, as specified in 20 U.S.C. 1400 et seq.
- (p) "Individualized family service plan" and "IFSP" mean a written plan for providing early intervention services to an eligible child and the child's family.
- (q) "Local community" means a geographic service area with various boundaries, including cities, counties, parts of counties, and multicounty regions, as defined by a local council.
- (r) "Local fiscal agency" means a legal entity designated by a local council and approved by the secretary that ensures compliance with part C of IDEA grant award and maintains an accounting system that meets the state and federal requirements under IDEA for generally accepted accounting principles for recording receipts, obligations, and disbursements of grant funds.
- (s) "Local lead agency" means a legal entity designated by the local council and approved by the secretary that ensures compliance with part C of IDEA.
- (t) "Local tiny-k program" means the part C early intervention services network, as determined by the local council, that serves a specific geographic area.
- (u) "Local tiny-k program coordinator" means the person designated by the local lead agency to be the central contact for the local tiny-k program.
- (v) "Mediation" means the process by which parties, together with the assistance of an impartial individual, move toward resolution or resolve a dispute through discussion of options, alternatives, and negotiation.
- (w) "Multidisciplinary IFSP team" means a parent and two or more individuals from separate professions who determine the early intervention services needed.
- (x) "Multidisciplinary evaluation and assessment team" means individuals from two or more professions, which may include one individual who is qualified in more than one profession, who complete an assessment and an evaluation.
- (y) "Parent" means any of the following:
- (1) A biological or adoptive parent of a child;
 - (2) a foster parent, unless state law or a contractual obligation with a state or local entity prohibits the foster parent from acting as a parent;
 - (3) a guardian authorized to act as a child's parent or authorized to make decisions regarding early intervention services, education, health, or development for a child;
 - (4) an individual acting in the place of a biological or adoptive parent; or
 - (5) a child advocate, as specified in K.A.R. 28-4-568.
- (z) "Part C" means the portion of IDEA that governs the grant program for states to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.
- (aa) "Party," when used in K.A.R. 28-4-569 to identify any participant in a complaint proceeding, means the lead agency, any local tiny-k program, any provider of early intervention services, or any person that files a complaint with the lead agency.
- (bb) "Payor of last resort" means the federal program that makes part C funds available to pay for early intervention services for an eligible child that are not paid from other public or private sources.

(cc) "Person," when used in this regulation and in K.A.R. 28-4-569 to identify any participant in a complaint proceeding, means a parent, an individual, or an organization.

(dd) "Potentially eligible," when used to describe a child, means that the child receives early intervention services at least 90 days before that child's third birthday or that the child is identified as eligible for part C at least 45 days before that child's third birthday.

(ee) "Primary referral source" means any of the following:

- (1) A hospital;
- (2) a physician;
- (3) a parent;
- (4) a child care program;
- (5) an early learning program;
- (6) a local educational agency;
- (7) a school;
- (8) a public health facility;
- (9) a public health agency;
- (10) a social service agency;
- (11) a clinic;
- (12) a health care provider;
- (13) a public agency in the child welfare system;
- (14) a homeless family shelter; or
- (15) a domestic violence shelter.

(ff) "Referral to the local tiny-k program" means a transfer of information by a primary referral source to determine eligibility for part C or to initiate or continue early intervention services.

(gg) "Screening process" means the clinical observation of or the use of a developmentally appropriate screening tool by a local tiny-k program to determine the need for evaluation.

(hh) "Secretary" means secretary of the Kansas department of health and environment. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended March 7, 2014.)

28-4-552. (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked March 7, 2014.)

28-4-556. (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked March 7, 2014.)

28-4-564. Personnel requirements.

(a) Early intervention services shall be provided by qualified personnel.

(b) Qualified personnel shall meet state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing early intervention services.

- (1) Each audiologist shall be licensed by the Kansas department for aging and disability services.
- (2) Each clinical professional counselor shall be licensed by the Kansas behavioral sciences regulatory board.
- (3) Each marriage and family therapist shall be licensed by the Kansas behavioral sciences regulatory board.
- (4) Each nurse shall be licensed as a registered professional nurse by the Kansas board of nursing.

- (5) Each nutritionist shall be a dietitian licensed by the Kansas department for aging and disability services.
 - (6) Each occupational therapist shall be licensed by the Kansas board of healing arts.
 - (7) Each orientation and mobility specialist shall meet the following requirements:
 - (A) (i) Have at least a bachelor's degree with an orientation and mobility endorsement, from an accredited university or college; or
 - (ii) have a bachelor's degree from an accredited university or college in any field of study and verification of orientation and mobility certification from an accredited university or college; and
 - (B) have completed 350 hours of supervised practice as an orientation and mobility specialist that includes direct service hours, related telephone calls, meetings, observations, and report writing. The practice shall be supervised by a certified orientation and mobility specialist.
 - (8) Each physician, including each pediatrician, shall be licensed by the Kansas board of healing arts and board-certified in the specialty area.
 - (9) Each physical therapist shall be licensed by the Kansas board of healing arts.
 - (10) Each psychologist shall be licensed by the Kansas behavioral sciences regulatory board or licensed as a school psychologist by the Kansas state board of education.
 - (11) Each family service coordinator shall have a bachelor's degree in education, health studies, nutrition, social welfare, or the human services field and have at least six months of experience in early childhood development. Each individual working as a family service coordinator before June 1, 2013 shall be deemed to have met the education and experience requirements of this paragraph.
 - (12) Each social worker shall be licensed by the Kansas behavioral sciences regulatory board.
 - (13) Each special educator and each special instruction provider shall be licensed by the Kansas state board of education in early childhood special education or in early childhood unified education.
 - (14) Each speech-language pathologist shall be licensed by the Kansas department for aging and disability services.
 - (15) Each teacher of the hearing-impaired shall be licensed as a teacher of the hearing-impaired by the Kansas state board of education.
 - (16) Each teacher of the blind and visually impaired shall be licensed as a teacher of the blind and visually impaired by the Kansas state board of education.
- (c) The continuing education requirements for licensure, registration, or certification for personnel providing early intervention services shall be determined by the regulatory body governing each profession.
- (1) Continuing education shall include discipline or cross-discipline information clearly related to the enhancement of the practice, value, skills, and knowledge of working with children with special needs, from birth through age two, and their families.
 - (2) If continuing education is a requirement for licensure, certification, or registration renewal, at least one-third of the required number of credits, units, points, or hours shall focus on the content specified in paragraph (c)(1).
 - (3) If continuing education is not a requirement for licensure, certification, or registration renewal, 24 continuing education hours that focus on the content specified in paragraph (c)(1) and are obtained in a three-year period shall be required.
- (d) Aides, assistants, and paraeducators in local tiny-k programs shall work under the supervision of a professional in that discipline according to the standards of that profession. (Authorized by and implementing K.S.A. 75- 5649; effective Jan. 30, 1995; amended March 7, 2014.)

28-4-565. Local tiny-k program responsibilities.

(a) Each local tiny-k program shall have a local council that has as one of its purposes the coordination of part C for infants and toddlers with disabilities and their families.

(1) The local council shall consist of members who reflect the community, including at least the following:

- (A) A parent of a child who has received part C services;
- (B) a representative of a health or medical agency;
- (C) a representative of an educational agency;
- (D) a representative of a social service agency; and
- (E) a representative of the local tiny-k program.

(2) The names of local council members shall be submitted to and acknowledged by the lead agency.

(3) The chair of the local council shall be elected by the local council. The name of the local council chair shall be provided to the lead agency. A local council chair shall not be a local tiny-k program coordinator.

(4) The responsibilities of the local council shall include the following:

- (A) Identifying local service providers who can provide early intervention services to infants and toddlers with disabilities and their families;
- (B) advising and assisting local service providers; and
- (C) communicating, combining, cooperating, and collaborating with other local councils on issues of concern.

(b) Each local tiny-k program coordinator, in collaboration with the local council, shall develop a plan describing the system for coordinating part C. The plan shall include the following:

- (1) Identification of a local lead agency, which shall be acknowledged by the secretary of the lead agency;
- (2) identification of a local fiscal agency, which shall be acknowledged by the secretary of the lead agency. The local lead agency and local fiscal agency may be the same agency, if the local lead agency is a legal entity;
- (3) a description of identified community needs and resources;
- (4) a description of written interagency agreements or memoranda of understanding and the way those agreements or memoranda are used in the development of an IFSP for eligible children and their families;
- (5) a public awareness program that informs community members about child find, the central point of contact for the community, and the availability of early intervention services;
- (6) a provision that part C shall be at no cost to eligible infants and toddlers and their families; and
- (7) an assurance that the information regarding the plan is available in the community.

(c) Each local tiny-k program coordinator and local council requesting part C and state funds shall submit an annual grant application to the lead agency, which shall meet the following requirements:

- (1) Include the plan for part C, as described in subsection (b); and
- (2) be in compliance with the grant application materials provided by the lead agency.

(d) Each local tiny-k program shall be required to utilize multiple funding sources with part C funds utilized as the payor of last resort. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended March 7, 2014.)

28-4-568. Child advocates.

- (a) Each local tiny-k program coordinator, with the assistance of the secretary, if needed, shall determine the legal relationship between a parent and a child before evaluation and assessment.
- (b) The lead agency shall assign a child advocate to a child if at least one of the following conditions is met:
- (1) No parent can be identified.
 - (2) A local tiny-k program, after reasonable efforts, cannot locate a parent.
 - (3) The child is in the custody of the state under the laws of Kansas, and parental rights have been severed.
- (c) The method used for assigning a child advocate shall be as follows:
- (1) Each local tiny-k program shall inform the lead agency or its contracting agency upon determining that a child needs a child advocate.
 - (2) Each local tiny-k program shall be assisted in locating an appropriate child advocate by the secretary. A child advocate shall be assigned under the authority of the lead agency or, if the child is in the custody of the state, appointed by the district court having jurisdiction over the custody proceedings for the child.
- (d) Each child advocate shall be selected from a list of individuals who have completed training in advocacy for individuals or have demonstrated knowledge of the power, duties, and functions necessary to provide adequate representation of a child. This list shall be maintained by the lead agency or its contracting agency.
- (e) The lead agency or its contracting agency shall ensure that each individual selected as a child advocate meets the following conditions:
- (1) Has no interest that conflicts with the interests of the child;
 - (2) has knowledge and skills that ensure representation of the child; and
 - (3) is not an employee of the lead agency or any agency involved in the provision of early intervention services or any other services to the child.
- (f) A child advocate shall not be considered an employee of the lead agency or any agency involved in the provision of early intervention services or any other services to the child solely because the individual is paid by a public agency to serve as a child advocate.
- (g) Each child advocate shall have the same rights as those of a parent under part C.
- (h) The contracting agency shall make reasonable efforts to ensure that a child advocate is assigned to a child less than 30 days after it is determined that the child needs a child advocate.
- (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended March 7, 2014.)

28-4-569. Resolution of complaints.

- (a) Complaints. Any person believing that there has been any violation of part C may file a complaint with the lead agency. A complaint may allege any violation of part C that occurred no more than one year before the lead agency received the complaint.
- (b) Complaint proceedings. Any person who files a complaint may participate in the resolution of the complaint through one or more of the proceedings specified in subsections (c), (d), and (e), which may occur individually or simultaneously. Each person shall be responsible for that person's legal fees.
- (c) Formal complaint. Any person may file a formal complaint against the lead agency, any local tiny-k program, or any provider of early intervention services, or any combination of these.
- (1) Each formal complaint shall be submitted on a form provided by the lead agency or shall be submitted as a written and signed statement that includes the following information:
 - (A) Any alleged violations of part C requirements;
 - (B) the alleged circumstances on which the formal complaint is based;

- (C) the contact information of the person filing the formal complaint; and
 - (D) a proposed resolution to the extent known and available to the person.
- (2) If the formal complaint alleges any violation regarding a specific child, the formal complaint shall include the following additional information:
- (A) The child's name and address;
 - (B) the name of the local tiny-k program providing early intervention services for the child;
 - (C) a description of any alleged violations regarding the child; and
 - (D) a proposed resolution of the problem, to the extent known and available to the person.
- (3) Any person may submit additional written information about the allegations in the formal complaint within five days after filing the formal complaint.
- (d) Mediation. A mediation may be requested by any party.
- (1) A mediation shall be conducted if it meets the following requirements:
 - (A) Is voluntary by each party;
 - (B) does not deny or delay a parent's right to a due process hearing or any other rights under part C; and
 - (C) is conducted by an impartial mediator trained in mediation techniques.
 - (2) Each mediator appointed by the lead agency shall meet the following requirements:
 - (A) Be selected on a random or impartial basis by the lead agency;
 - (B) have knowledge of the laws and regulations relating to early intervention services;
 - (C) not be an employee of the lead agency or the provider of early intervention services; and
 - (D) be impartial and not have a private or professional interest in the outcome of the mediation.
 - (3) Each mediation shall be scheduled by agreement of each party and shall be held in a location convenient to each party.
 - (4) Each mediator shall perform the following duties:
 - (A) Listen to the presentation of each party to determine facts and issues;
 - (B) assist in the development of creative alternatives to resolve the complaint; and
 - (C) facilitate negotiation and decision making.
 - (5) If the parties resolve a dispute through mediation, the parties shall execute a legally binding mediation agreement.
 - (6) All discussions that occur during a mediation shall remain confidential.
- (e) Due process hearing. Each due process hearing shall be conducted by a hearing officer who has knowledge of part C and early intervention services.
- (1) Each due process hearing shall be conducted at a time and place convenient to the parents.
 - (2) Each hearing officer shall meet the requirements for impartiality specified in paragraph (d)(2), except that the hearing officer shall be selected by the office of administrative hearings.
 - (3) The hearing officer shall perform the following duties:
 - (A) Schedule the hearing;
 - (B) listen to each party's presentation;
 - (C) examine the information presented by each party;
 - (D) issue a written decision and provide the written decision to each party within 30 days after the lead agency receives the due process complaint; and
 - (E) provide a written or electronic verbatim transcription of the hearing.
 - (4) Each parent involved in a due process hearing shall have the following rights:
 - (A) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services;
 - (B) to present evidence and testimony from witnesses;

(C) to prohibit the introduction of any evidence that has not been disclosed to the parent at least five days before the hearing; and

(D) to be provided with the written decision of the hearing officer and the verbatim transcription of the hearing at no cost.

(f) Each local lead agency and each local fiscal agency shall be responsible for the costs of remediation of part C complaints through formal complaint, mediation, or due process hearing proceedings, except legal fees. (Authorized by and implementing K.S.A. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended March 7, 2014.)

28-4-573. System of payments.

(a) Part C funds shall be available at no cost to a family even if that family provides consent to bill third-party sources, including private insurance.

(b) Funds under part C may be used only for early intervention services that infants and toddlers with disabilities need if the early intervention services are not paid for by any other federal source or any Kansas, local, or private source, in accordance with 34 C.F.R. 303.520. (Authorized by and implementing K.S.A. 75-5649; effective March 7, 2014.)

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Doc. No. 042284